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ART UNIT	**PAPER NUMBER**
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/608,473
Filing Date: June 30, 2000
Appellant(s): HEARN ET AL.

Eugene J. Rosenthal
(Registration No. 36,658)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on June 06, 2005 appealing from the Office action mailed on May 27, 2004.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

REAL PARTY IN INTEREST

1. The statement identifying the real party in interest is contained in the appeal brief.

RELATED APPEALS AND INTERFERENCES

2. The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF THE CLAIMS

3. The statement of the status of claims contained in the appeal brief is correct.

STATUS OF AMENDMENT

4. This is in response to the appeal brief filed on June 06, 2005 appealing from the Office action (Final Rejection) mailed on May 27, 2004.

SUMMARY OF INVENTION

5. The summary of claimed subject matter contained in the appeal brief is correct.

ISSUES

6. The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

GROUP OF CLAIMS

7. The appellant's statement of the group of the claims in the appeal brief is correct.

CLAIMS APPEALED

8. The copy of the appealed claims contained in the Appendix to the appeal brief is correct.

PRIOR ART OF RECORD

9. US Patent No. 6,557,031, published on April 29, 2003, filed on September 04, 1998 by Mimura et al.

GROUND OF REJECTION

CLAIM REJECTIONS - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

11. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1 the phrase "may be" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Other dependent claims, which are not specifically cited above are also rejected because of the deficiencies of their respective parent claims.

CLAIM REJECTIONS - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.
The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

13. Claims 1-6, 20-21, 26-27, 31, 34-36, and 40-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Mimura et al (U.S. Patent No. 6,557,031).

Mimura's patent discloses all the limitations for the claims 1-6, 20-21, 26-27, 31, 34-36, and 40-43 recited in the claimed invention.

14. As to claims 1-2 and 6, Mimura et al teach a method for processing an internet protocol (IP) packet, comprising the step of: identifying that said packet contains motion picture expert group (MPEG)-2 video as a function of only the contents of said IP data payload of said IP packet exclusive of any information in any real time protocol (RTP) header which therein, wherein said MPFG-2 video is in transport stream format; and processing said IP packet with a priority assigned for packets containing video when said packet is identified in said identifying step to contain video (figures 1-7; column 2 lines 28-54; and column 3 line 65 to column 4 line 65; and column 12 lines 17-46).

15. As to claims 3-5, Mimura et al teach that said IP data payload contains at least one real time protocol (RTP) packet which contains said MPEG-2 video; said IP data payload is a unreliable datagram protocol (UDP) data payload; and said IP data payload is a transmission control protocol (TCP) data payload (figures 1-7; column 1 lines 7-22; column 8 lines 24-45; column 2 lines 28-54; column 10 lines 13-42; and column 12 lines 17-46).

16. As to claims 20-21, Mimura et al teach a method for processing an internet protocol (IP) packet, comprising the steps of: searching through a payload of said IP packet exclusive of any information in any real time protocol (RTP) header therein for a pattern indicative of the presence of motion picture expert group (MPEG)-2 video; indicating that said IP packet contains MPEG-2 video only if said pattern is found; and determining whether a payload of said IP packet has a length equal to an integral multiple of a length of an MPEG-2 transport stream packet either before or after subtracting from said payload length the length of an RTP head (figures 3-5; column 9 line 5 to column 12 line 15; and column 12 lines 17-46).

17. As to claim 26, Mimura et al teach said payload is at least one of a set of payloads within an IP packet, said set consisting of: a) an IP data payload, b) an unreliable datagram protocol (UDP) data payload that does not include a real time protocol (RTP) header, c) that portion of a UDP data payload after an RTP header that is included in said UDP data payload, and d) a transmission control protocol (TCP) data payload (figures 4-5; and column 12 lines 17-46).

18. As to claim 27, Mimura et al teach the step of processing said IP packet with a priority assigned for packets containing video when said indicating step indicates that said IP packet contains video (column 9 line 43 to column 10 line 11).

19. As to claims 31, 34-36, they are also rejected for the same reasons set forth to rejecting claims 20-21 above.

20. As to claims 40-41, they are also rejected for the same reasons set forth to rejecting claims 20-21 above, since claims 40-41 are merely a program product for the method of operation defined in the method claims 20-21.

21. As to claims 42-43, they are also rejected for the same reasons set forth to rejecting claims 20-21 above, since claims 42-43 are merely an apparatus for the method of operation defined in the method claims 20-21.

CLAIM OBJECTIONS

22. Claims 7-19, 22-25, 28-30, 32-33, and 37-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 7-19, 22-25, 28-30, 32-33, and 37-39 are objected over the prior art of record.

The examiner has found that the prior art of record does not teach or suggest or render obvious a limitation "pattern of MPEG-2 sync bytes" and its functionality and usage in the method, system, and computer program product for processing an internet protocol (IP) packet at set forth in the dependent Claims 7-19, 22-25, 28-30, 32-33, and 37-39.

RESPONSE TO ARGUMENTS

23. The examiner summarizes the various points raised by the appellant and addresses them individually.

24. As per appellants' arguments filed on June 06, 2005, appellants argued in substance that:

(A) Argument: Appellant traverses the rejection under 35 U.S.C. 112, second paragraph because the words following "may be" are not so much limitations of the claimed invention but rather are merely descriptive of a conventional element that may, but need not, exist within an IP data payload.

Response: Appellant claimed that "said packet contains motion picture expert group (MPEG)-2 video as a function of only the contents of said IP data payload of said IP packet exclusive of any information in any real time protocol (RTP) header which may be therein", which discloses that (MPEG)-2 video is depend only on the content of the IP data payload. If the real time protocol (RTP) header contains data A (the data A depend on the content of the IP data payload) or data B (the content of the IP data payload depend on the data B), then the phrase "may be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention and the real time protocol (RTP) header contains the conventional element, which is not irrelevant.

In conclusion, claims 1-19 are indefinite over the rejection under 35 U.S.C. 112, second paragraph because the reasons set forth above.

(B) Argument: Mimura et al. do not disclose that the IP packets do not come out from the sources because MPEG-TS packets are not IP packets.

Response: Mimura et al. suggest that the IP packets are used in the Internet instate of the MPEG-TS packets, and indirectly disclose that the IP packets come out from the sources (summary of the invention; column 2 lines 51-54; and column 12 line 48 to column 13 line 14).

(C) Argument: Mimura et al. do not teach searching through a payload of an IP packet and determining/comparing a length of an IP packet and an MPEG-2 transport stream packet.

Response: Mimura et al teach a method for processing an internet protocol (IP) packet, comprising the steps of: searching through a payload of said IP packet exclusive of any information in any real time protocol (RTP) header therein for a pattern indicative of the presence of motion picture expert group (MPEG)-2 video; indicating that said IP packet contains MPEG-2 video only if said pattern is found; and determining whether a payload of said IP packet has a length equal to an integral multiple of a length of an MPEG-2 transport stream packet either before or after subtracting from said payload length the length of an RTP head (figures 3-5; column 9 line 5 to column 12 line 15; and column 12 lines 17-46).

(D) Argument: Mimura et al. do not teach processing the IP packet with a priority assigned for packets containing video when said indicating step indicates that said IP packet contains video.

Response: Mimura et al teach the step of processing the IP packet with a priority assigned for packets containing video when said indicating step indicates that said IP packet contains video (column 9 line 43 to column 10 line 11).

25. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Bharat Barot

BHARAT BAROT
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ZARNI MAUNG
SUPERVISORY PATENT EXAMINER

Patent Examiner Bharat Barot

Art Unit 2155

September 02, 2005

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